IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 299/2004
(Smt. Bali & Ors. Vs. Lahru Lal & Anr.)

Date of Order : 30/08/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. Mahipal Rajpurohit for the petitioners.
Mr. Ashok Upadhyay, public prosecutor.

BY THE COURT:-

By the instant criminal misc. petition under Section 482 Cr.P.C., the petitioners have challenged the order dated 28.11.2003 passed by Judicial Magistrate, Railmagra, district Rajsamand (for short 'the trial court' hereinafter) whereby the trial court dismissed the application of the petitioners for issuing warrant of attachment for recovery of the arrears of maintenance awarded by the trial court vide order dated 27.5.1997 in Criminal Case No.53/96.

I have heard learned counsel for the petitioners. Carefully gone through the order dated 27.5.97. The order dated 27.5.1997 came to be challenged before Additional Sessions Judge, Rajsamand (for short 'the revisional court' hereinafter) by

filing a revision petition, which came to be allowed by order dated 17.7.98 by modifying the order of the trial court and a lump sum amount of Rs.55,000/- as one time maintenance was granted in favour of the petitioners. Thus, the order of the trial court dated 27.5.97 merged in the order of the revisional court dated 17.7.98. Despite the fact that the petitioners have compromised the matter in the revision, which is evident from the order of the revisional court dated 17.7.98, the petitioners moved an application under Section 125 (3) Cr.P.C., requesting the trial court to issue warrant of attachment for the recovery of arrears of maintenance. Obviously, the order under which the petitioners claim arrears of maintenance had already merged in the order of the revisional court and therefore, no warrant of attachment in compliance of that order which has been modified by the order of the revisional court, can be issued and thus, in my view, the trial court was justified in dismissing the application filed by the petitioners. In the circumstances, therefore, it cannot be said that the order impugned would result in serious miscarriage of justice or abuse of process of any Court.

The petition has no force and is therefore, dismissed.

(H.R.PANWAR),J.

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